

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

USA,

Plaintiff,

v.

KELLEY,

Defendant.

Case No. [15-cr-00444-CRB-2](#)

**ORDER STAYING MOTION FOR
COMPASSIONATE RELEASE**

On May 16, 2020, Defendant Kevin Kelley moved for compassionate release under 18 U.S.C. § 3582(c)(1)(A). See First Mot. (dkt. 141). The Court denied Mr. Kelley's motion because Mr. Kelley's infection with COVID-19 and lack of underlying medical conditions did not constitute extraordinary and compelling reasons to reduce his sentence, especially because Mr. Kelley had apparently recovered from COVID-19. See Order Denying First Mot. (dkt. 146) at 3. Mr. Kelley now moves the Court to reconsider that decision based on his current condition and new medical evidence, including evidence that he is suffering from long-term symptoms relating to COVID-19. See Second Mot. (dkt. 148) at 2.

18 U.S.C. § 3582(c)(1)(A) provides that a "court may not modify a term of imprisonment once it has been imposed except . . . upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant." A court may modify a term of imprisonment "upon motion of the defendant" only

after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier.

1 18 U.S.C. § 3582(c)(1)(A). Although § 3582(c)(1)(A) does not impose any substantive
2 requirements on a defendant's initial administrative request, the Bureau of Prisons'
3 implementing regulations require that the request contain both the "extraordinary and
4 compelling reasons that the inmate believes warrant consideration" and "[p]roposed
5 release plans." 28 C.F.R. § 571.61.

6 As to the instant motion, Mr. Kelley has not satisfied these requirements. Mr.
7 Kelley's original request to the warden did not rely on the same basic arguments and
8 medical evidence as Mr. Kelley's instant motion. See Letter to Warden (dkt. 144-3).
9 Therefore, the Bureau of Prisons has not had the opportunity to address the merits of Mr.
10 Kelley's renewed motion for compassionate release. Mr. Kelley cannot avoid that
11 exhaustion requirement by merely labeling his second motion for compassionate release as
12 a motion for reconsideration.

13 The Court hereby stays Mr. Kelley's motion for 45 days so that Mr. Kelley may
14 properly exhaust his administrative remedies. To do so, Mr. Kelley must submit a new
15 request to the warden that complies with the content requirements in 28 C.F.R. § 571.61.
16 Then, after Mr. Kelley has fully exhausted all administrative rights to appeal a failure of
17 the Bureau of Prisons to bring a motion on his behalf or the lapse of 30 days from the
18 receipt of Mr. Kelley's new request by the warden, whichever is earlier, Mr. Kelley will
19 have satisfied the statute's exhaustion requirements. See 18 U.S.C. § 3582(c)(1)(A).

20 **IT IS SO ORDERED.**

21 Dated: February 25, 2021



22 CHARLES R. BREYER
23 United States District Judge
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